

REPRESENTATIVE FOR PETITIONERS:

Ronald Sedam, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Michael West, Vigo County Reassessment Supervisor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

RONALD & JANET SEDAM,	)	Petition No.:	84-013-15-1-5-00966-16
	)		
Petitioners,	)	Parcel No.:	84-02-13-403-006.000-013
	)		
v.	)	County:	Vigo
	)		
VIGO COUNTY ASSESSOR,	)	Township:	Otter Creek
	)		
Respondent.	)	Assessment Year:	2015

Appeal from the Final Determination of the  
Vigo County Property Tax Assessment Board of Appeals

**August 9, 2017**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ISSUE**

1. Did the Petitioners prove the 2015 assessment was incorrect?

## PROCEDURAL HISTORY

2. The Petitioners initiated their 2015 appeal with the Vigo County Assessor on November 2, 2015. On March 22, 2016, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. On April 26, 2016, the Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On May 16, 2017, the Board's administrative law judge, Patti Kindler (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. Ronald and Janet Sedam appeared *pro se*. Vigo County reassessment supervisor Michael West appeared for the Respondent. All of them were sworn and testified.
5. The Petitioners submitted the following exhibits:

Petitioners Exhibit 1:	Information regarding the subject property from <i>realtor.com</i> ,
Petitioners Exhibit 1A:	Subject property data from <i>Beacon</i> ,
Petitioners Exhibit 2:	"Summary of valuation calculations" created by the Petitioners,
Petitioners Exhibit 3A:	Pages 1 and 2 from an article posted on <i>entrepreneur.com</i> entitled "[T]he effect of freight railroad tracks and train activity on residential property values,"
Petitioners Exhibit 3B:	Page 3 from "[T]he effect of freight railroad tracks and train activity on residential property values,"
Petitioners Exhibit 4:	United States consumer price index (CPI) inflation percentages from <i>inflation.eu</i> ,
Petitioners Exhibit 5:	Estimate of value from <i>remax.com</i> ,
Petitioners Exhibit 6:	Screenshot of U.S. housing market inflation index in the Chicago area from the fourth quarter of 2015 from <i>economist.com</i> ,
Petitioners Exhibit 7:	Screenshot of U.S. housing market inflation index in the Chicago area from the fourth quarter of 2014 from <i>economist.com</i> ,
Petitioners Exhibit 8:	Screenshot of U.S. housing market inflation index in the Chicago area from the fourth quarter of 2013 from <i>economist.com</i> ,

- Petitioners Exhibit 9: Screenshot of U.S. housing market price indicators for 2016 from *economist.com*,
- Petitioners Exhibit 10: Cover letter of an appraisal for the subject property dated March 27, 2014, indicating an effective date for both 2012 and 2013 assessment years,
- Petitioners Exhibit 11: Property data for 2734 East Colonial Avenue from *Beacon*,
- Petitioners Exhibit 12: Property data for 2535 East Thomas Avenue from *Beacon*,
- Petitioners Exhibit 13: Property data for 5028 East Rose Hill Avenue from *Beacon*,
- Petitioners Exhibit 14: Property data for 2798 East Peggy Avenue from *Beacon* and *Zillow.com*.

6. The Respondent submitted the following exhibits:

- Respondent Exhibit 1: Several Geographical Information System (GIS) maps of the subject property's neighborhood,
- Respondent Exhibit 2: 2014 subject property record card,
- Respondent Exhibit 3: 2015 subject property record card,
- Respondent Exhibit 4: Copy of the PTABOA's request for additional evidence dated February 10, 2016,
- Respondent Exhibit 5: List of sales in the Otter Creek Township from 2014 and 2015.

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131 with attachments,
- Board Exhibit B: Hearing notice dated April 4, 2017,
- Board Exhibit C: Hearing sign-in sheet.

8. The property under appeal is a single-family residence located at 4063 East Plantation Avenue in Terre Haute.

9. The PTABOA determined the total assessment is \$82,900 (land \$30,900 and improvements \$52,000).

10. At the hearing, the Petitioners requested a total assessment of \$75,300.

**JURISDICTIONAL FRAMEWORK**

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax

exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### OBJECTIONS

12. Mr. West objected to all of the Petitioners' exhibits on the grounds they failed to comply with the Board's procedural rules. Mr. West argued that according to 52 IAC 2-7-1(b)(1) the Petitioners were required to provide their exhibits at least five business days prior to the hearing, but they failed to do so. In response, the Petitioners did not dispute Mr. West's claim, but stated "they were on vacation and did not receive the notice in time to comply with the exchange rules." The ALJ deferred ruling on the objection.
13. Here, because the Petitioners elected to opt out of the Board's small claims process they were required to exchange copies of their documentary evidence at least five business days prior to the hearing.<sup>1</sup> 52 IAC 2-7-1(b)(1). The exchange requirement allows parties to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at the hearing. Failure to comply with this requirement can be grounds to exclude evidence. 52 IAC 2-7-1(f). However, the Board may waive the evidence-sharing requirements for materials that were submitted or made part of the record at the PTABOA hearing. 52 IAC 2-7-1(d).
14. The Petitioners admitted they failed to comply with the pre-hearing evidence exchange requirements, therefore the Respondent's objection is sustained. However, the Board overrules the objection in regard to Petitioners' Exhibit 10 and will admit this exhibit. The record is clear that the Respondent previously viewed this exhibit because Mr. West testified the Respondent relied on the appraisal for the 2012 and 2013 assessments.

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<sup>1</sup> It is unclear from the record if the Respondent complied with the Board's procedural rule regarding the exchange of evidence. Because the Petitioners never raised the issue, the Board will not raise it *sua sponte*.

Ultimately, the exclusion of the bulk of the Petitioners' exhibits does not affect the final determination.

15. The Petitioners objected to the way the Respondent performed recent trending, arguing it is "very unfair to the property owner" and does not consider "special circumstances." The Respondent did not offer a response. The ALJ took the objection under advisement.
16. The Petitioners' objection goes to the weight of the evidence and testimony rather than its admissibility. The Petitioners' objection is overruled. The Respondent's testimony and accompanying evidence are admitted.

#### **PETITIONERS' CONTENTIONS**

17. The property's assessment is too high. In 2012 the property was appraised at \$73,000 and ultimately the 2012 and 2013 assessments were lowered to \$73,000.<sup>2</sup> In 2014, the assessment increased to \$79,000 and in 2015 the assessment increased again to \$82,900. *R. Sedam argument; J. Sedam testimony; Pet'rs Ex. 1A, 10.*
18. The Respondent has failed to consider the property is "negatively influenced" by railroad tracks and power lines. According to an article from the *Appraisal Journal*, "proximity to train tracks is considered a nuisance" and "residential sale prices decreased by up to 7%-10% within 100 meters (about 330 feet) of a railroad track." The Petitioners' home is located 139 feet from the railroad tracks. The constant train activity causes the home to vibrate, covers the home with soot, interrupts phone calls, damages electrical boxes, loosens screws, rattles doors and windows, cracks plaster, and interrupts outdoor activities. Additionally, there is a "constant threat of derailment and chemical spills." The close proximity to the "high tension power lines" negatively affects the property by creating "severe electronic interference." In the past, "discounts" were applied to the

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<sup>2</sup> The Petitioners' only submitted the cover letter of the 2012 appraisal. According to the cover letter, "the assessed value for 03/01/2012 of \$73,000 is judged to be the same for 03/01/2013."

assessment to account for the railroad and overhead power lines, but they have been “taken away.” *R. Sedam argument; J. Sedam testimony; Pet’rs Ex. 2, 3A, 3B.*

19. In an effort to prove a more accurate value for the property, the Petitioners presented four separate calculations. The first two methods relied on the 2012 appraised value of \$73,000 as a starting point. The first calculation method utilized the U.S. Consumer Price Index to trend the appraisal value by “1.62% in 2014 and 0.12% in 2015” for an “inflation rate” adjusted value of \$74,200. The second calculation method utilized the U.S. Housing Market Inflation Index for Chicago “at 3% for 2014 and 1.3% for 2015” to trend the appraisal value to \$76,200. *R. Sedam testimony; Pet’rs Ex. 2, 4, 6, 7, 8, 9, 10.*
20. The Petitioners also offered a “screenshot” from *remax.com* indicating a value of \$92,800 for the property. This amount was “adjusted” by 10% to account for the train tracks and then adjusted by 5% to account for the powerlines.<sup>3</sup> After adjustments were made, the Petitioners arrived at an estimated value of \$79,300.<sup>4</sup> *R. Sedam testimony; Pet’rs Ex. 2, 3A, 3B, 5.*
21. The Petitioners added their three estimates of value, along with the figure from *relator.com*, together for a total of \$301,100 and divided this total by four. According to this calculation, the “requested fair value” for the property is \$75,300. *R. Sedam argument; Pet’rs Ex. 2.*
22. Finally, the Petitioners argue that 2015 neighborhood assessments exceed “actual market value.” In support of this argument, the Petitioners presented *Beacon* property data and sales information for several nearby properties:
  - 2734 East Colonial Avenue sold for \$81,650 on December 18, 2014. This property was assessed for \$110,800 in 2015.

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<sup>3</sup> The Petitioners also argue that “poor water quality” should be factored into the 5% adjustment along with the powerlines.

<sup>4</sup> The Petitioners also offered a “screenshot” from *realtor.com* estimating the value of the property at \$71,731. *Pet’rs Ex. 1.*

- 2535 East Thomas Avenue sold for \$72,000 on December 22, 2014. This property was assessed for \$95,000 in 2015.
- 5028 East Rose Hill Avenue sold for \$79,900 in March of 2014. This property was assessed for \$114,000 in 2015.
- 2798 East Peggy Avenue sold for \$84,900 on December 4, 2014. This property was assessed for \$100,700 in 2015.

*R. Sedam argument; Pet'rs Ex. 11, 12, 13, 14.*

### **RESPONDENT'S CONTENTIONS**

23. The subject property is correctly assessed. The increase in the 2015 assessment is a direct result of trending. The Petitioners' appraisal was trended from \$73,000 in 2013 to \$79,000 in 2014. Then it was trended again in 2015 to \$82,900. The PTABOA applied a "negative 25% obsolescence factor" to the property in 2012 and this has not been removed. However, in 2012 "an undocumented influence factor on the land" was removed from the property. *West argument; Resp't Ex. 2, 3, 5.*
24. Vigo County is "crisscrossed by railroad tracks." No credible evidence has been presented indicating sale prices are affected by railroad tracks. *West argument.*

### **BURDEN OF PROOF**

25. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
26. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or

township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

27. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
28. Here, the parties agree the assessed value of the property did not increase by more than 5% from 2014 to 2015. Further, the Petitioners failed to offer any argument that the burden should shift to the Respondent. Thus the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioners.

#### ANALYSIS

29. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales-comparison, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

30. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. See Ind. Code § 6-1.1-4-4.5(f).
31. As previously explained, the bulk of the Petitioners' evidence was excluded from the record because the Petitioners failed to comply with the Board's procedural rules. The only admitted exhibit is Petitioners' Exhibit 10. This exhibit, a cover sheet to a 2012 and 2013 appraisal, is not enough, by itself, to prove the subject property's market value-in-use as of March 1, 2015. For these reasons, the Petitioners failed to make a prima facie case that the 2015 assessment is incorrect. However, for the following reasons, even if the Board had considered the Petitioners' evidence in its entirety, they still failed to make a prima facie case.
32. In an effort to prove the subject property was erroneously assessed, the Petitioners relied on a previously performed appraisal. This appraisal stated the value was appropriate for both the 2012 and 2013 assessment years. The Petitioners attempted to trend the appraisal value forward by applying the CPI and housing market inflation rates for the Chicago area. One problem with this method is that the Petitioners failed to offer any explanation as to how these market rates relate to the subject property or their neighborhood. Additionally, even if the Petitioners had relied on more relevant trending rates, the Petitioners' appraisal value is unreliable. The Petitioners only offered the cover letter of the appraisal. Without the entire appraisal, the Board cannot determine how the appraiser determined the opinion of value. Further, there is no indication whether the appraisal was prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP). In light of these considerations, this evidence lacks probative value.
33. Similarly, the online valuation estimate from *remax.com* lacks probative value. Again, there is no evidence as to when and how these values were determined or whether the valuation methodology conforms to USPAP or generally accepted appraisal principles.

For these reasons, the Petitioners four separate value conclusions and ultimately their “average value” computation lacks probative weight.

34. The Petitioners generally claim that they should receive a 10% reduction in the assessment for the railroad tracks, and a 5% reduction for power lines and “poor well-water quality.” The Board recognizes that these factors can result in a loss of value to a property. But valuation conclusions, or value loss conclusions, must be more than the “average” of numbers. Again, the burden is on the Petitioners to offer probative valuation evidence. Here, a paired-sales analysis, for example, could have helped the Petitioners isolate an actual loss in value due to the railroad tracks.
35. Finally, the Petitioners offered data that appears to indicate four properties sold for less than their assessed values. The Petitioners argued that assessed values in their subdivision are “inflated.” While the Petitioners did not specifically make such a claim, their evidence about sales-to-assessment ratios might relate to a claim for an equalization adjustment based on lack of uniformity and equality in assessments.
36. A lack of uniformity and equality in a mass-appraisal assessment for a class or stratum of properties may be inferred from analyzing the ratios of assessment-to-sale price for a subgroup of properties within that class or stratum. *See* MANUAL at 14 (explaining that a ratio study “statistically measures the accuracy and uniformity of the assessments produced by the mass appraisal method.”) Where a ratio study shows that a given property is assessed above the common level of assessment, that property’s owner may be entitled to an equalization adjustment. *See Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been had other property in Lake County been properly assessed). *See also Westfield Golf Practice Center, LLC v. Washington Twp. Ass’r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (“when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an

assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.”)

37. Ratio studies involve relatively sophisticated statistical comparisons that meet professionally accepted standards. *See Kemp v. State*, 726 N.E.2d 395,404 (Ind. Tax. Ct. 2000) (“[A] sales ratio study, prepared using professionally acceptable standards, would measure the uniformity of assessments under a market based assessment system.”); *see also, IAAO Standard, passim* (describing the statistical analyses used in ratio studies). Such studies must be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So. 2d 272, 276 (Fla. Dist. Co. App. 1994)). The Petitioners failed to establish that their evidence satisfied these requirements and therefore their evidence ultimately lacks probative value.
38. Consequently, even if the Board had considered all of the Petitioners’ exhibits, they failed to make a prima facie case the 2015 assessment was incorrect. Where the Petitioners have not supported their claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

## SUMMARY OF FINAL DETERMINATION

39. The Board finds for the Respondent and no change will be made to the 2015 assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.